

**NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS**

**DIVISION OF COMMUNITY RESOURCES**

**Lead Hazard Control Assistance Fund**

**Proposed New Rules: N.J.A.C. 5:48**

Authorized By: Susan Bass Levin, Commissioner, Department of Community Affairs

Authority: N.J.S.A. 52:27D-437.6

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-217

Submit written comments by August 6, 2004 to:

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**SUSAN BASS LEVIN, Commissioner**

**The agency proposal follows:**

**Summary**

The proposed new rules would implement the provisions of the “Lead Hazard Control Assistance Act,” P.L. 2003, c.311 (N.J.S.A. 52:27D-437.1 et seq.) under which the Department of Community Affairs is authorized to provide deferred payment loans

with forgiveness and deferred payment loans without forgiveness for lead hazard control work and relocation of families with young children who are at risk of exposure to lead hazards.

The chapter includes three subchapters.

Subchapter 1, General Provisions, includes the scope of the rules and definitions of words and terms used throughout.

Subchapter 2, Lead Hazard Control Assistance Fund, contains sections on the Fund's purpose and the program objectives; allocation of funds; forms of financial assistance; limitations on financial assistance; release of funds; basic eligibility criteria; additional eligibility criteria – abatement projects; additional eligibility criteria - interim control projects; eligible project activities/costs; funding priorities; non-displacement controls; Lead Safe Housing Registry; public inspection of the Lead Safe Housing Registry; relocation due to immediate risk; and lead education/outreach and training.

Subchapter 3, Emergency Lead Poisoning Relocation Fund, contains sections on the Fund's purpose and objectives; forms of financial assistance; basic eligibility criteria; eligible activities/costs; reimbursement of the Fund; and liability for relocation costs.

The Division of Community Resources would administer all of these programs.

Chapter 11, 12 and 14 of the United States Department of Housing and Urban Development's "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," published in June 1995 have been incorporated by reference herein.

Chapter 11 titled Interim Controls provides guidance on the performance of paint stabilization as a method of Interim Control of lead-based paint hazards. Chapter 11 identifies the typical lead coatings, causes for their failure, substrate treatment, new coating application, paint removal methods, surface cleaning, priming, topcoats, cleaning and clearance of the work area and ongoing monitoring of the treated areas.

Chapter 12 titled Abatement provides guidance on the steps to be taken to perform lead-based paint abatement including the appropriate time to perform cleaning for each abatement treatment method.

Chapter 14 provides detailed information on how to clean following the performance of lead-based paint hazard treatments including; step-by-step procedures for pre-cleaning, cleaning during the job, and daily and final cleanings.

24 CFR 35.1330(b) titled Paint Stabilization of the United States Department of Housing and Urban Development's "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," are incorporated by reference herein. This section provides direction on the performance of paint stabilization as a method of

Interim Control. It includes the requirement to treat any physical defect in the substrate of a painted surface or components that is causing the paint to deteriorate, acceptable methods for removing loose paint and other loose materials, the requirement to use safe work practices and the application of a new coating.

A 60-day comment period has been provided for this proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a) 5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

#### **Social Impact**

The proposed new rules would implement a statute intended to protect the health and safety of young children by ensuring that they have a lead-safe environment.

#### **Economic Impact**

Under the programs established by these proposed new rules, the Department would administer financial assistance in an amount of \$7 million annually. Deferred payment loans with provisions for forgiveness would be available only to low-income owners of one-to-four family residential dwellings when they occupy one of the units as their principal residence at the time of application and agree to remain in occupancy following completion of the lead hazard control work for the period described at N.J.A.C. 5:48-2.3. Deferred payment repayable loans are available to all other applicants.

The specific costs associated with applying and receiving assistance under the LHCA Fund will vary from case to case. It is anticipated that in the majority of cases

where the applicant is an owner-occupant of a one-to-four family dwelling who qualifies as low income, costs associated with applying for assistance and loan processing shall be nominal and/or shall be eligible costs for LHCA Funding. All other applicants may expect to incur the costs normally charged by lenders and loan processors such as: the cost of a credit report, appraisal, loan processing fees, title insurance and other title services and escrow services. It may be necessary for applicants who are self-employed, corporations, limited liability companies or partnership entities to obtain professional services in the preparation of financial reports to verify income or for debt coverage ratio analysis when any applicant is requesting assistance for work being performed upon a multi-family dwelling.

All applicants for LHCA Funds must establish the presence of lead-based paint hazards. The per-unit costs of a lead hazard evaluation are estimated to be between \$150.00 to \$300.00. These costs will be borne by the LHCA Fund or become part of the loan amount for owner-occupants of a one-to-four family dwelling who qualify as low-income.

There shall be no application or loan processing costs to applicants for ELPR Funds; however, owners of the rental housing unit from which the tenant-applicant was moved may be required to reimburse the ELPR Fund in accordance with N.J.A.C. 5:48-3.6.

The cost benefit of implementing the Lead Hazard Control Assistance Act may not be precisely quantifiable but it is possible to put forward some modest estimates of the significant potential savings that can be realized. Medical costs associated with

treatment of children who are exposed to high levels of lead, special education costs and decreased lifetime earnings associated with reduced cognitive abilities are all costs directly related to allowing our children's continued exposure to lead-based paint hazards in their living environment. Medical costs for children with high blood lead levels include physician visits, laboratory testing, chelation therapy, neuropsychological testing, and follow-up testing. The Centers for Disease Control estimated a reduction in such medical costs of \$1,800 (1994 dollars) per child by preventing childhood elevated blood lead levels above 25 ug/dL. This same group of children is also more likely to require special education. The Centers for Disease Control estimated that preventing a child's blood lead level from rising above 25 ug/dL saves, on average, approximately \$4,000 (1994 dollars) per child. Every year about 600 New Jersey children under the age of six are found with a blood lead level above 25 ug/dL. Preventing 600 children from exposure could potentially reduce medical and special education costs over \$3 million each year. Understanding that these figures are based on 10-year old estimates, it is presumed actual costs are substantially higher. The Center for Disease Control estimates that for each IQ point a child loses, their lifetime earning potential drops between \$2,220 and \$9,663. They also estimate that a child's IQ drops about one IQ point for each four ug/dL increase in blood lead levels. Using this formula, New Jersey children are losing tens of millions of dollars.

### **Federal Standards Statement**

The proposed new rules would implement a State statute that incorporates the definitions under Federal law of "lead-safe housing" and "lead-hazard control work."

However, no Federal standards analysis is required because these rules are not being proposed under the authority of, or in order to implement, comply with, or participate in, any program established under, Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements, other than as has been indicated.

### **Jobs Impact**

Insofar as the proposed new rules would implement a funding program for lead hazard control work, it may stimulate employment in the lead hazard abatement industry.

### **Agriculture Industry Impact**

The proposed new rules would have no impact upon the agriculture industry.

### **Regulatory Flexibility Analysis**

All owners of buildings subject to the “Lead Hazard Control Assistance Act,” P.L. 2003, c.311, be they “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or otherwise, would be equally subject to reporting and recordkeeping requirements inherent in the financial assistance process and to requirements of compliance with the terms of the loan agreement. As with any agreement, loan applicants may require legal and accounting assistance, as well as the assistance of persons performing the actual work.

Basic compliance records shall include documents that prove the assisted property continues to be used as the original loan applicant’s principal residence (if the applicant applied as an owner-occupant), evidence of payment of real estate taxes, water and sewer

assessments, evidence of hazard insurance and nondiscrimination in accordance with 5:48-2.6(m).

There are no capital costs of compliance. The specific costs associated with applying and receiving assistance under the LHCA Fund will vary from case to case. It is anticipated that in the majority of cases where the applicant is an owner-occupant of a one-to-four family dwelling who qualifies as low income, costs associated with applying for assistance and loan processing shall be nominal and/or shall be eligible costs for LHCA Funding. All other applicants may expect to incur the costs normally charged by lenders and loan processors such as: the cost of a credit report, appraisal, loan processing fees, title insurance and other title services and escrow services. It may be necessary for applicants who are self-employed, corporations, limited liability companies or partnership entities to obtain professional services in the preparation of financial reports to verify income or for debt coverage ratio analysis when any applicant is requesting assistance for work being performed upon a multi-family dwelling.

All applicants for LHCA Funds must establish the presence of lead-based paint hazards. The per-unit costs of a lead hazard evaluation are estimated to be between \$150.00 to \$300.00. These costs will be borne by the LHCA Fund or become part of the loan amount for owner-occupants of a one-to-four family dwelling who qualify as low-income.

There shall be no application or loan processing costs to applicants for ELPR Funds; however, owners of the rental housing unit from which the tenant-applicant was



moved may be required to reimburse the ELPR Fund in accordance with N.J.A.C. 5:48-3.6.

The application and compliance requirements set forth would not have a significant economic impact on small businesses and are the minimum necessary to insure the eligibility of the applicant and to insure the work is performed in such a way as to protect public health and safety.

### **Smart Growth Impact**

The proposed new rules would not affect the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed new rules follows.

## **CHAPTER 48**

### **LEAD HAZARD ASSISTANCE CONTROL FUND**

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

##### **5:48-1.1 Purpose**

The purpose of the Lead Hazard Control Assistance Act is to provide a comprehensive program to identify lead hazards in residential housing and also to identify housing which is safe from exposure to lead hazards in order to eradicate the major source of lead exposure of our State's children. These rules are intended as part of a comprehensive program intended to safeguard children with emphasis upon rental

housing and require the State to track the progress of making all of New Jersey's housing stock lead hazard controlled.

#### **5:48-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Abatement project” means a project which utilizes abatement as the method or primary method of controlling lead-based paint hazards.

“Commissioner” means the Commissioner of Community Affairs

“Concurrent rehabilitation” means work undertaken to correct a housing condition considered to be a “causative factor” immediately prior to or simultaneous with the lead hazard control work being funded with LHCA funds.

“Causative factor” means any housing condition that contributes to the deterioration of paint or the significant accumulation of household dust, such as: the failure of a system designed to prevent moisture infiltration (roof, siding, windows), leaks or other deficiencies in household plumbing or heating, horizontal surfaces which are damaged, worn and/or not washable (floors, window wells, stair treads).

"Department" means the Department of Community Affairs.

“Division” means the Division of Community Resources.

“ELPR” means Emergency Lead Poisoning Relocation.

"Eligible loan" means a loan made in accordance with the provisions of this chapter for the purpose of financing lead hazard control work in housing located in the State.

"Financial assistance" means loans and deferred payment loans with provisions for forgiveness.

“Gross annual income” means the total calculated amount of a household’s income from all sources including, but not limited to, salary, wages, regular overtime, interest, dividends, alimony, child support, pensions, social security, unemployment, disability, business income and capital gains, tips, welfare benefits and imputed income from assets. Income is calculated based upon a weekly, bi-weekly, semi-monthly or monthly figure that is effective at the time of the income certification interview and estimated for a 12-month period.

“Household” means one or more persons occupying a dwelling unit

“Interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including

specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs, or the term as it is defined under 42 U.S.C. 4851b.

“Interim control project” means a project which uses solely interim controls to reduce or temporarily control lead-based paint hazards.

“LCHA” means Lead Hazard Control Assistance.

"Lead abatement" means a set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Commissioner at N.J.A.C. 5:17 provided that such standards shall be consistent with applicable Federal standards. The term includes:

1. The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and
2. All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures;

"Lead-based paint" means paint or other surface coating material that contains lead in excess of 1.0 milligrams per centimeter squared or in excess of 0.5 percent by weight, or such other level as may be established by Federal law.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present in surfaces, that would result in adverse human health effects.

"Lead evaluation" means a surface-by-surface investigation to determine the presence and condition of lead-based paint and the provision of a report explaining the results of the investigation, including, but not limited to, hazards found and recommendations for abatement.

"Lead hazard control work" means work to make housing lead-safe, or to mitigate, through the use of interim controls as permitted under Federal law and as defined in 42 U.S.C. 4851b, or to eliminate permanently lead-based paint hazards on a premises by a business firm or person certified to perform lead abatement work pursuant to sections 1 through 12 of P.L. 1993, c.288 (N.J.S.A. 26:2Q-1 et seq.) and sections 14 through 24 of P.L. 1993, c.288, (N.J.S.A. 52:27D-427 et seq.) and the costs of temporary relocation, as prescribed at N.J.A.C. 5:48-2.9(a)7, while lead hazard control work is being performed. The determination of the Commissioner shall be subject to review

and appeal pursuant to the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

“Lead-safe housing” means housing in which a lead-based paint hazard risk has been significantly reduced through the use of interim controls as permitted under Federal law and as defined in 42 U.S.C. 4851b, housing that is lead-free or housing in which lead abatement has been performed.

“Low-income household” means a household whose gross annual income is equal to 50 percent or less of the median gross income established by geographic region and household size using income figures and family size adjustment methodology published periodically in the Federal Register by the US Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

“Multifamily housing” means a dwelling unit in a multiple dwelling as defined in section 3 of P.L.1967, c.76 (N.J.S.A. 55:13A-3).

“Median income” means gross annual incomes established by geographic region and household size using income figures and family size adjustment methodology published periodically in the Federal Register by the US Department of Housing and Urban Development.

“Primary residence” means the dwelling unit wherein a household maintains continuing residence for no less than nine months each calendar year

“Project” means a site or an entire building or two or more buildings together with the site or sites on which the building or buildings are located that are under common ownership, management and financing and are to be assisted with LHCA funds under a commitment by the owner as a single undertaking.

“Qualified contractor” means a firm that uses individuals trained in lead-safe work practices when performing interim controls or rehabilitation funded in whole or in part with LHCA funds.

"Surface" means an area such as an interior or exterior wall, ceiling, floor, door, doorframe, windowsill, window frame, porch, stair, handrail and spindle, or other abradable surface, soil, furniture, a carpet, a radiator or a water pipe.

## **SUBCHAPTER 2. LEAD HAZARD CONTROL ASSISTANCE FUND**

### **5:48-2.1 Purpose and program objectives**

(a) The purpose of the Lead Hazard Control Assistance Fund is to provide financial assistance in the form of deferred payment loans with provision for forgiveness and deferred payment loans without forgiveness to eligible property owners.

(b) The LHCA Fund shall be used to:

1. Identify lead-based paint hazards in residential housing;
2. Eradicate lead hazards to the greatest extent feasible through the performance of lead hazard control work (interim controls or lead abatement) and the correction of conditions creating lead-based paint hazards;
3. Relocate tenant households when they are living in conditions which pose an immediate risk of continuing exposure to lead hazards for any of their children;
4. Identify housing in which people are safe from ongoing exposure to lead-based paint hazards and create a registry of that housing;
5. Increase public awareness of the dangers of lead-based paint; and
6. Provide educational opportunities

#### **5:48-2.2 Allocation of funds**

The Administrator of the LHCA Fund shall determine on an annual basis the amount of funds that shall be allocated for administration, education/outreach/training, lead hazard control, and lead safe housing registry. The Lead Hazard Control allocation shall be further apportioned between two property types: properties containing one to four housing units and properties containing five or more units.

#### **5:48-2.3 Forms of financial assistance**



(a) Except as otherwise provided in (b) below, financial assistance to eligible owners shall be repayable loans. The Administrator of the LHCA fund shall determine on an annual basis the rate of interest that loans shall bear. The initial interest rate shall be three percent. All loans shall be secured by a lien upon the property upon which work is performed. Payments shall be deferred and loans shall become due and payable upon refinance, transfer, sale of the property, and/or expiration of the mortgage term. Applicants must establish their ability to repay the loan using their equity in the subject property or equity in their personal residence or other real property or through other such guarantees as approved by the Division Director. Loans may be made up to 125 percent of value of the subject property; however, loan to value shall not exceed 75 percent of value when alternative real estate is offered as additional security for the loan. Value shall be determined by an appraisal. For properties containing one to four housing units, the loan term shall be 20 years. For properties containing five or more housing units, the debt coverage ratio shall be 1.25 with a flexible loan term tied to net operating income. Properties containing five or more housing units will also be required to establish a repayment reserve account. If a repayment reserve account is not feasible, the owner shall provide additional real estate as security.

(b) Financial assistance in the form of deferred payment loans with provisions for forgiveness is available upon the basis of property type, occupancy and income. The LHCA fund shall consider owner-occupants of a one-to-four family dwelling for a deferred payment loan with forgiveness provided they qualify as a low-

income household. The Administrator of the LHCA fund shall determine on an annual basis the rate of interest that loans shall bear. The initial interest rate shall be three percent. The term of the loan shall be established according to the principal loan amount. For every \$10,000 increment or portion thereof, the loan term shall be five years, up to a maximum loan term of 20 years. Therefore: a property owner wishing to borrow from \$1.00 to \$10,000 shall have a five-year loan term; from \$10,001 to \$20,000 shall have a 10-year loan term; from \$20,001 to \$30,000 shall have a 15-year loan term; and from \$30,001 and higher shall have a 20-year loan term

(c) The Department shall forgive a portion of the deferred payment loan each year when the loan qualifies for forgiveness under (b) above. The portion shall be determined by dividing the principal loan amount plus interest by the loan term. Owners must provide evidence on an annual basis of their compliance with the terms of the LHCA loan agreement, Mortgage, and Mortgage Note. This evidence shall be delivered to the Department on or before the anniversary date of the loan in a form acceptable to the Department. Basic compliance shall include, but is not limited to: proof that the assisted property continues to be used as the original loan applicant's principal residence; evidence of payment of real estate taxes, water and sewer assessments; and evidence of hazard insurance and nondiscrimination in accordance with N.J.A.C. 5:48-2.6(m).

#### **5:48-2.4 Limitations on financial assistance**

(a) The maximum amount of financial assistance shall be \$150,000 per dwelling unit;

(b) The minimum amount of financial assistance shall be an average of \$5,000 per dwelling unit.

#### **5:48-2.5 Release of LHCA funds**

LHCA loan funds shall be deposited into an escrow account. The escrow agent shall make payments only when authorized by the Department. The escrow agent shall issue payments to contractors on behalf of property owners, except that a property owner may elect to make payments to contractors and request reimbursement from the escrow account. An escrow agreement shall be executed that reflects, to the extent feasible, the anticipated frequency, amounts and dates of draws against funds held in escrow. The escrow agreement shall stipulate that releases shall be made only upon written authorization from the Department. Any interest which accrues on funds held in escrow shall be paid to the owner upon written approval from the Department.

#### **5:48-2.6 Basic eligibility criteria**

(a) The applicant must be the property owner. A property owner means the titleholder of record as reflected in the most recently dated and recorded deed for the particular dwelling unit. The applicant must provide a complete copy of the recorded deed showing himself or herself as the owner. The recording information must be legible. If ownership is vested in more than one person, all owners must sign as

applicants and execute all loan documents. When the ownership entity is a corporation, the applicant must provide a copy of the certificate of incorporation, and copy of the corporate resolution authorizing the rehabilitation and abatement activities and designating an individual who will be acting on the corporation's behalf. A list of corporate principals is also required. When the applicant is a limited liability company, the applicant must provide a copy of the company's Certificate of Formation and Operating Agreement and any documents establishing the authority of the member making application. When the applicant is a trustee, the applicant must provide a copy of the documents which established the trust, named the trustee and established the authorities that have been granted to the trustee. The trustee must have the authority to execute the required loan documents.

(b) The owner must provide evidence of lead-based paint hazards. Evidence shall be in the form of a lead hazard evaluation performed by a New Jersey licensed lead evaluation firm or a hazard assessment performed by the Local Board of Health in accordance with N.J.A.C. 8:51.

(c) The housing must have been constructed prior to 1978. Written evidence shall be obtained from public records such as a statement from the tax assessor. The written evidence shall establish the year the building was constructed. If the exact year is not known, the written evidence shall, at a minimum, establish whether the building was constructed prior to 1978. If the applicant wishes priority consideration under N.J.A.C. 5:48-2.8, the written evidence shall establish whether the building was constructed prior to 1950.

- (d) Real estate taxes, water and sewer assessments must be paid current.

Written evidence shall be provided at the time of application.

- (e) Multiple dwellings must be registered in accordance with N.J.A.C. 5:10.

Proof of registration of multi-family dwellings is required for buildings containing three or more residential units. If a building is not registered at the time of application, owners must make application and provide evidence of it. A copy of the latest Bureau of Housing Inspection Report must be provided.

- (f) The owner must maintain hazard insurance on the property. This

insurance must cover loss or damage caused by fire and other hazards, normally included under “extended coverage” insurance. The amount of coverage shall be the greater of: the total of the principal secured by the mortgage and the principal secured by the senior mortgage (if any) or the current replacement value of the buildings and improvements to the extent available. Coverage must be in effect at the time of application and must remain in force throughout lead hazard control work and loan term. The owner must agree that all payments from the insurance company must be payable to the LHCA fund under a standard mortgage clause in the insurance policy. In the event of loss, the LHCA may use any proceeds to repair and restore the property or to reduce the amount due under the mortgage.

- (g) Properties located within a Federal or State Special Flood Hazard Area

(that is area designated “A” or “V” Zone by the Federal Emergency Management Agency) must be insured by flood insurance for the life of the loan

(h) Properties previously assisted with LHCA funds may reapply only if the previous LHCA assistance (deferred payment loan with or without forgiveness) has been repaid together with any interest.

(i) No single applicant shall be eligible for LHCA funds in excess of 20 percent of the applicable allocation for lead hazard control work for the year, see N.J.A.C. 5:48-2.2.

(j) LHCA funds shall not be used to fund lead hazard control work in a building undergoing a change of use, addition or reconstruction as defined at N.J.A.C. 5:23-6.3.

(k) Ownership entities other than individuals are not eligible for deferred payment loans with provisions for forgiveness or preferred interest rate loans.

(l) Applicants requesting deferred payment loans with provisions for forgiveness must verify gross annual income by providing source documents such as copies of pay stubs, benefit award letters, net income from rents, net income from operation of a business or profession, interest, or dividends. Earned income from household members 18 years of age or older must be included in calculating gross annual income. Earned income of minors (household members 17 and under) shall not be counted.

(m) Owners of rental units to be assisted with LHCA funds shall give equal treatment in the rental of housing regardless of race, creed, color, national origin,

nationality, ancestry, sex, marital status, familial status, affectional or sexual orientation, or mental and physical disability.

**5:48-2.7 Additional eligibility criteria – abatement projects**

(a) Abatement projects must also meet the following criteria in addition to the basic eligibility criteria at N.J.A.C. 5:48-2.6:

1. Occupants must be willing and able to relocate during the performance of the abatement work when required under N.J.A.C. 5:17
2. Projects must achieve the LHCA Fund lead-based paint abatement criteria at N.J.A.C. 5:48-2.9(b) upon completion of work; and
3. Projects must achieve the LHCA Fund causative factors criteria at N.J.A.C. 5:48-2.9(c) upon completion of work

**5:48-2.8 Additional eligibility criteria – interim control projects**

(a) Interim control projects must also meet the following criteria in addition to the basic eligibility criteria at N.J.A.C. 5:48-2.6:

1. Interim control projects shall not use abatement methods in the treatment of lead-based paint hazards:

2. Property must not be cited under N.J.A.C. 8:51; and
3. Property must achieve the LHCA Fund interim controls criteria at N.J.A.C. 5:48-2.9(d) upon completion of work.

**5:48-2.9 Eligible project activities/costs**

(a) The following project activities/costs shall be eligible for funding:

1. Lead hazard evaluation; The LHCA Fund shall obtain a lead hazard evaluation of the applicant's property as a part of the application process. The evaluation shall be a combined lead-based paint inspection/risk assessment in accordance with 40 CFR 745.

2. Scope of work preparation/cost estimation: The LHCA Fund shall obtain lead hazard control and concurrent rehabilitation scopes of work which shall contain the following key elements:

- i. Qualifications of contractor and persons performing work;
- ii. General Requirements;
- iii. Location and identity of component or surface and treatment method; and
- iv. Minimum specifications – that is new components, quality of materials.

3. Building permits: Costs associated with the application and issuance of a building permit from the local Construction Official in accordance with the Uniform



Construction Code, N.J.A.C. 5:23 are eligible for LHCA funding when the permit is for work which is an eligible activity. All permits must be properly closed out, with the appropriate Certificate (that is Clearance, Approval, Occupancy) being issued.

4. Interim controls: Interim controls are eligible activities and costs are eligible for LHCA funding when the work is performed by qualified contractors and the work is necessary to achieve the LHCA Fund interim controls criteria at (d) below.

5. Lead hazard abatement: Lead hazard abatement is an eligible activity and costs are eligible for funding when the abatement is performed in accordance with N.J.A.C. 5:17, Lead Hazard Evaluation and Abatement Code, and the work performed conforms with the LHCA Fund lead-based paint abatement criteria at (b) below. When abatement work is performed to address hazards cited in a local board of health lead abatement order in accordance with N.J.A.C. 8:51-6, Abatement of Lead Hazards, the work must be approved by the local board of health prior to performance in order for the associated costs to be eligible under the LHCA Fund. In all cases, lead abatement work must be performed by a licensed lead abatement contractor and must conform to the requirements at N.J.A.C. 5:17 to be considered eligible.

6. Concurrent rehabilitation: Concurrent rehabilitation is an eligible activity and costs are eligible for LHCA funding when performed by qualified contractors and

the work is required to achieve the LHCA Fund causative factors criteria at (c) below. Concurrent rehabilitation work may be performed prior to abatement or following abatement depending upon the nature of the work; however, work which must be performed to insure abatement treatments do not fail must be performed prior to abatement (that is roof repair, repair of plumbing leaks).

7. Relocation during performance of work: Relocation is an eligible activity when the relocation is temporary (tenants shall not be permanently displaced as a result of LHCA Funded activities) and necessary to protect occupants during the performance of lead-based paint hazard control work. Temporary relocation during the performance of rehabilitation work is eligible for LHCA funding when the nature of the rehabilitation work makes occupancy of the housing unit hazardous or renders the housing uninhabitable (as defined by State and/or local habitability codes) during the performance of the work. Relocation costs for services/activities shall comply with the temporary relocation requirements of N.J.A.C. 5:11 Relocation Assistance and Eviction. Tenants must be notified of the owner's intention to apply for LHCA funds for the purposes of lead hazard control work and the effect the activity will have upon them. The owner is responsible for insuring household furnishings and personal belongings are removed from the work areas in accordance with the requirements of N.J.A.C. 5:17 and 24 CFR 35.1345, Occupant Protection and Worksite Preparation. Eligible costs include expenses for those families in place prior to application to the LHCA Fund. Owners must be notified that tenants moving

into rental units after he or she has applied for LHCA assistance are not eligible for relocation assistance.

8. Clearance testing/reporting: Clearance testing is an eligible activity and must be performed following abatement, interim controls and rehabilitation. Clearance following abatement must conform to 40 CFR Part 745, Environmental Protection Agency regulations on Lead; Identification of Dangerous Levels of Lead; Final Rule, except that dust wipe samples shall be single surface samples. Clearance following Interim Controls or Rehabilitation shall conform to 24 CFR 35.1340(c) Lead Safe Housing Rule.

9. Maintenance plans: A maintenance plan shall be prepared following completion of lead hazard control work that includes a monitoring schedule together with a written description of the monitoring or surveillance that an owner will perform to insure:

- i. That known or suspected lead-based paint is not deteriorating;
- ii. That lead-based paint hazard controls, such as paint stabilizations; enclosure, or encapsulation have not failed;
- iii. That structural problems do not threaten the integrity of lead hazard control measures or treatments or of known or suspected lead-based paint;
- iv. That dust lead levels have not risen above applicable standards; and

v. A listing and schedule of any work that must be periodically performed to maintain the integrity of lead-based paint and/or lead-based paint hazard controls.

10. Application and loan processing: The Department may incorporate the costs of application and loan processing into the loan amount at its sole discretion. Costs may include, but are not limited to: the cost of a credit report, appraisal, loan processing fees, title insurance and other title services and escrow services.

(b) LHCA Fund lead-based paint abatement criteria are as follows:

1. For all projects: Replace windows in habitable rooms when window components which are friction surfaces (sash, jamb, interior stop, blind stop and parting bead) test positive for lead-based paint (an XRF reading of 1.0mg/cm<sup>2</sup> or greater);

2. For all projects: Provide an acceptable treatment in habitable rooms when friction, impact, chewable or mouthable surfaces test positive for lead-based paint (an XRF reading of 1.0 mg/cm<sup>2</sup> or greater) and show visible signs of serious paint deterioration and/or are identified by a risk assessor as a lead-based paint hazard. Acceptable forms of treatment are: replacement of components, enclosure, or paint removal;

3. For all projects: Provide an acceptable treatment in habitable rooms for any other surface and/or component not covered under (b) 1 or 2 above when the surface/component tests positive for lead-based paint and the surface/component is identified by an inspector/risk assessor as a lead-based paint hazard. Acceptable forms of treatment are: replacement of components, enclosure, encapsulation, or paint removal;

4. For all projects: Replace or enclose or encapsulate (subject to N.J.A.C. 5:17-6.4(b)1) with a washable floor surface all floors that test positive for lead-based paint;

5. For all projects: Clean all treated rooms and all untreated habitable rooms. In all cases, cleaning shall be in accordance with N.J.A.C. 5:17, Lead Hazard Evaluation and Abatement Code, and Chapters 12 and 14 of the “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing,” published in June 1995 by the United States Department of Housing and Urban Development, incorporated herein by reference, as amended and supplemented, hereinafter referred to as the “HUD Guidelines,” must be performed. A copy of the “HUD Guidelines” may be obtained for \$45.00 from: HUD User, P.O. Box 23268, Washington, DC 20026-3268, or may be obtained in the internet at: <http://www.hud.gov>. An area is considered satisfactorily cleaned when a visual inspection is conducted and there is no visible evidence of dust and post-cleaning dust wipe results achieve the clearance standards defined at

N.J.A.C. 5:17- 9, Final Inspection and Clearance Testing. Carpeting may be replaced with a washable floor surface when it is identified as a lead hazard. Carpeting must be dry vacuumed prior to using a low-moisture cleaning method;

6. For all projects: For lead-based paint, dust or soil hazards identified on a lead hazard evaluation, which are not covered in (b) 1 through 5 above, the LHCA Fund shall use the recommendations of the inspector/risk assessor performing the lead hazard evaluation; and

7. As funding permits: Other lead-based paint reduction or abatement treatments. Priority consideration will be given as follows:

i. First priority: Any remaining lead-based paint whether or not it is currently a hazard on friction, impact, and chewable or mouthable surfaces. Acceptable treatments are: replacement, enclosure or paint removal. All first priority surfaces must be treated before second priority surfaces can be treated.

ii. Second priority: any remaining lead-based paint on other surfaces. Acceptable treatments are: replacement, removal, encapsulation, enclosure or stabilization.

(c) The LHCA Fund causative factors criteria are:

1. For all projects: All systems designed to prevent moisture infiltration (that is roof, siding, windows, gutter systems) must be functional prior to performing lead hazard control work;

2 For all projects: All plumbing must be inspected for leaks and deficiencies must be corrected;

3. For all projects with steam or hot water heating: The heating system must be inspected for leaks and deficiencies must be corrected;

4. For all projects: Moisture venting systems must be inspected and deficiencies must be corrected (that is bathrooms, dryers); and

5. For all projects: Floors which have tested negative for lead-based paint must be repaired or sealed and thoroughly cleaned. If the existing floor covering is carpeting, carpet must be dry vacuumed and, if soiled, additional cleaning shall be performed using a low-moisture cleaning method. Dry vacuuming must be performed prior to low-moisture cleaning.

(d) The LHCA Fund interim controls criteria are:

1. For components/surfaces which are NOT friction, impact, or chewable surfaces at a minimum, paint shall be stabilized in accordance with the

United States Department of Housing and Urban Development's Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, 24 CFR 1330(b), and Chapter 11 of the United States Department of Housing and Urban Development's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, published in June 1995, incorporated herein by reference, as amended and supplemented;

2. For components/surfaces which are friction, impact, or chewable surfaces: Paint must be removed from contact areas or temporary barriers shall be installed;

3. All habitable rooms shall be cleaned in accordance with HUD Guidelines, Chapter 11. For soiled carpets, use low moisture cleaning method only after dry vacuuming; and

4. Provide an ongoing maintenance plan to property owners and tenants.

(e) Application for funding shall be made on forms prescribed/supplied by the Department. Information to be provided includes: The name of owner-applicant; contact information – address and telephone numbers, social security number, and applicant income information; general property information such as the year of construction, type



of building, use of building, and number of residential dwelling units in the structure; building financial information such as the rental income produced, and the operating and other expenses; the location and extent of lead-based paint hazards; and demographic information on the applicant and occupants of the housing unit for which assistance is requested.

#### **5:48-2.10 Funding priorities**

(a) First priority for funding shall be given to housing constructed prior to 1950 and occupied by families with children under the age of six.

(b) Second priority for funding shall be given to housing constructed prior to 1978 and after 1950 and occupied by families with children under the age of six.

(c) Third priority for funding shall be given to housing not identified in (a) or (b) above.

(d) No priority funding consideration shall be given to any application on the basis of the location of the housing.

#### **5:48-2.11 Non-displacement controls**

Existing tenants in occupied units shall not be permanently displaced as a result of any activity funded in whole or in part by the LHCA Fund except in the case of a tenant

household when it has been determined that they are living in conditions which pose an immediate risk of continuing exposure to lead hazards for any of their children.

Whenever possible, relocation shall be temporary in nature to allow the property owner the opportunity to correct unsafe conditions.

#### **5:48-2.12 Lead Safe Housing Registry**

(a) The purpose of the Lead Safe Housing Registry is to supply a list from which lead-safe housing can be easily identified, and through which the State's progress in rendering housing lead hazard controlled can be tracked.

(b) At a minimum, the Department shall enter onto the Lead Safe Housing Registry the following dwelling units:

1. Any dwelling unit assisted with LHCA Funds;
2. All residential dwellings constructed after 1977; and
3. All multiple dwellings in accordance with N.J.A.C. 5:10.

#### **5:48-2.13 Public inspection of Lead Safe Housing Registry**

The Lead Safe Housing Registry shall be a governmental record open to public inspection and copying.

#### **5:48-2.14 Relocation due to immediate risk**

(a) The LHCA Fund shall consider applications for relocation payments to remove a tenant family from housing where a lead hazard exists and which poses an immediate risk of continuing exposure to lead hazards for any children living in the housing.

(b) Immediate risk is defined as a child having a health indicator of exposure to lead at levels greater than the Center for Disease Control recommended level of 10 micrograms of lead per deciliter of blood combined with the existence of lead-based paint hazards in that child's residence.

(c) Eligibility criteria for payments under this section shall be:

1. The applicant shall be the head of household;
2. The applicant's primary residence must be a rental residential dwelling;
3. The applicant's household must include a qualifying child. A qualifying child means: a member of the applicant's household who is a child under the age of 18 with a blood lead level of 10 micrograms of lead per deciliter of blood who resides with the applicant at least nine months of the year;

4. The applicant must provide evidence of the existence of a lead-based paint hazard in their primary residence. Acceptable forms of evidence include: lead evaluation performed by a certified inspector/risk assessor or a hazard assessment performed by a local board of health; and

5. The applicant must provide evidence of immediate risk. Acceptable forms of evidence include a written determination from a local board of health or primary care provider that the affected child(ren) is at immediate risk due to continuing exposure to a lead hazard.

(d) Relocation payments made for tenant households under this section are subject to the reimbursement provisions of N.J.A.C. 5:48-3.

#### **5:48-2.15 Lead education/outreach and training**

(a) The Department shall set aside a minimum of five percent of the total budget allocated to lead hazard control or \$1,000,000 whichever is greater for the purpose of increasing public awareness of the dangers of lead-based paint and to provide opportunities for training in lead related disciplines. Lead related disciplines include, but are not limited to: abatement supervisor, abatement worker, inspector/risk assessor, dust wipe technician, project designer, lead-safe work practices, and lead-safe maintenance practices.

(b) Statewide, regional and local education/outreach and training efforts shall be coordinated with the Inter-Agency Task Force on the Prevention of Lead Poisoning. The Division may elect to enter into contracts with other State agencies, regional providers of services, regional coalitions and/or local boards of health for implementation of this section.

### **SUBCHAPTER 3. EMERGENCY LEAD POISONING RELOCATION FUND**

#### **5:48-3.1 Purpose and program objectives**

The purpose of the Emergency Lead Poisoning Relocation Fund (ELPR Fund) is to provide financial assistance to relocate a child and his or her family when that child has tested positive for lead poisoning and that child is removed from his or her dwelling unit in connection with an order to abate a lead-based paint hazard. The relocation may be temporary or permanent and the child and family must be relocated to a lead safe housing unit.

#### **5:48-3.2 Forms of financial assistance**

The ELPR Fund shall make relocation payments in accordance with N.J.A.C. 5:11, Relocation Assistance and Eviction.

#### **5:48-3.3 Basic eligibility criteria**

(a) The basic eligibility criteria for ELPR funds are:

1. The applicant shall be the head of a household with a child under the age of six that has a confirmed blood lead level of 20ug/dL (or the most current Centers for Disease Control standard) or higher;
2. The applicant shall be subject to an order to vacate or order for removal issued by a State agency or unit of local government undertaking a program of building code enforcement, housing code enforcement or health code enforcement; and
3. The applicant's current residence must be subject to an order to abate/notice of violation issued by the local board of health in accordance with N.J.A.C. 8:51-6.1.

#### **5:48-3.4 Eligible activities/costs**

In accordance with N.J.A.C. 5:11, Relocation Assistance and Eviction, the ELPR Fund shall provide financial assistance for up to 100 percent of the actual reasonable costs of moving expenses either temporary or permanent or a fixed payment, based on the number of rooms in the unit. The fixed payment shall not exceed \$1,000 per household plus a \$400.00 dislocation allowance.

### **5:48-3.5 Reimbursement of ELPR Fund**

If reimbursement is received from the property owner, Federal or state sources or from insurance proceeds, such reimbursement shall be directed to reimburse the ELPR Fund for payments made under this subchapter.

### **5:48-3.6 Liability for relocation costs**

(a) Whenever relocation assistance is authorized pursuant to the LHCA or ELPR Fund, the Commissioner may determine to seek reimbursement for payments made for relocation assistance from the owner of the rental housing from which the tenants were moved. The Commissioner shall seek reimbursement if the owner of such rental housing had failed to maintain the housing in a lead-safe condition in accordance with N.J.A.C. 5:10 or municipal ordinance.

(b) In the case of any displacement of a household from a unit of rental housing that has been found, in a final administrative or judicial determination, not to be maintained in lead-safe condition in accordance with N.J.A.C. 5:10, 5:15, 5:27 or 5:28 or by municipal ordinance, all relocation costs incurred by a public agency to relocate that household shall be paid by the owner of the rental housing to the public agency making relocation payments upon presentation to the owner by the public agency of a statement of those relocation costs and of the date upon which the relocation costs are due and payable.

(c) In the event that the relocation costs to be paid to the public agency are not paid within 10 days after the due date, interest shall accrue and be due to the public agency on the unpaid balance at the rate of 18 percent per annum until the costs, and the interest thereon, shall be fully paid to the public agency.

(d) In the event that the relocation costs to be paid to a public agency shall not be paid within 10 days after the date due, the unpaid balance thereof and all interest accruing thereon shall be a lien on the parcel in which the dwelling unit from which displacement occurred is located. To perfect the lien granted by this section, a statement showing the amount and due date of the unpaid balance and identifying the parcel, which identification shall be sufficiently made by reference to the municipal assessment map, shall be recorded with the clerk or register of the county in which the affected property is located and, upon recording, the lien shall have the priority of a mortgage lien. Whenever relocation costs with regard to the parcel and all interest accrued thereon shall have been fully paid to the public agency, the statement shall be promptly withdrawn or canceled by the public agency.

(e) In the event that relocation costs to be paid to a public agency are not paid as and when due, the unpaid balance thereof and all interest accrued thereon, together with attorney's fees and costs, may be recovered by the public agency in a civil action as a personal debt of the owner of the property. If the owner is a corporation, the directors, officers and any shareholders who each control more than five percent of the total voting



shares of the corporation, shall be personally liable, jointly and severally, for the relocation costs.

(f) All rights and remedies granted by this section for the collection and enforcement of relocation costs shall be cumulative and concurrent.

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April 23, 2004